THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 24479 of 2005

O r d e r:

The petitioner, who retired from the service of APSPDCL, has filed this writ petition seeking a Writ of Mandamus declaring (i) the proceedings of the 2nd respondent, namely the Chief General Manager, issued vide Memo No. CGM/HRD/D8/A.8.III/ PO(DC)/F.No./D.No.692/05, dated 30.08.2005 and (ii) the complaint of the 1st respondent, namely the Superintending Engineer, made to the 3rd respondent, namely the Station House Officer, vide letter No. SE/O/GNT/Adm/ C1/D.No.853/05, dated 09.06.2005, as illegal and arbitrary.

An enquiry was conducted to ascertain the missing of an un-serviceable – 3.15 MVA Power Transformer (Sl. No. 2378) IMP make, said to have been unloaded at District Stores/Guntur, where the petitioner worked as Additional Assistant Engineer. The enquiry report, disclosed that the petitioner was responsible for the missing Power Transformer. Based on the enquiry report, the 2nd respondent vide Memo dated 30.08.2005, impugned in this writ petition, called upon the petitioner to show cause within 15 days from the date of receipt of the said memo as to why an amount of Rs.1,82,500/- being the cost of the damaged Power Transformer should not be recovered and as to why punishment of "cut of 25% in his pension for a period of five years", should not be imposed. The 1st respondent also lodged a criminal complaint against the petitioner vide letter dated 09.06.2005 before the 3rd respondent with regard to the missing Power Transformer.

The learned counsel for the petitioner submits that the petitioner was retired from service on 3.08.2004, and the action of the 2nd respondent in issuing the impugned Memo dated 30.08.2005, calling upon him to show cause as to why the amount mentioned therein should not be recovered and the punishment as suggested therein should not be imposed, is illegal and arbitrary. He submitted that since the respondents at the time of his retirement issued "No Objection Certificate", he should not be made responsible for the missing Power Transformer. He submits that the fact that the petitioner is not responsible for the missing Power Transformer, is evident from the records maintained by the respondents. He submitted that neither any enquiry was pending against the petitioner nor any action was initiated against him within six months after his retirement. He submitted that respondent Nos. 1 and 2 have pre-decided that the petitioner is responsible for the missing Power Transformer, and this is evident from the fact that the impugned Memo, seeks to recover the cost of the damaged Power Transformer and seeks to impose punishment, which is illegal and arbitrary. He submitted that the criminal complaint lodged by the 1st respondent before the 3rd respondent against the petitioner long after the petitioner retired from service, cannot be maintained. He thus prayed that the impugned Memo as well as the complaint, be quashed and set aside.

The 1st respondent filed counter. The learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2 reiterating the counter averments submitted that as the 3.15 MVA unserviceable Power Transformer was lifted out of the District Stores during the tenure of the petitioner, the 1st respondent lodged police complaint against the petitioner before the 3rd respondent. Further based on the findings arrived at in the enquiry report, which found that the petitioner

was responsible for the missing of the Power Transformer, the 2nd respondent has come to the provisional conclusion to recover the amount of Rs.1,82,500/- being the cost of the damaged Power Transformer from the petitioner and also to award punishment of "cut of 25% in his pension for a period of five years", and accordingly directed the petitioner to show cause why the said amount should not be recovered and the punishment as suggested therein imposed. The petitioner having received the show cause notice, has not submitted his explanation, and therefore, it should be deemed that the petitioner is responsible for the missing Power Transformer.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent Nos. 1 and 2-APSPDCL.

It is the contention of the petitioner that he having retired from service, and no more an employee of the respondents, the respondents could not have issued the impugned order, and more so when no enquiry either was pending at the time of his retirement or was initiated within six months from the date of his retirement. The petitioner except contending so, has not shown any provision, which disables or bars the respondents from initiating any action against their employee after retirement. In the absence of any provision shown by the petitioner, which disentitles the respondents from proceeding against a retired employee for the lapses alleged to have been committed by him during the course of his service with the respondents, the petitioner cannot be allowed to contend that the respondents cannot issue the impugned notice, seeking to recover the amount mentioned therein, being the cost of the damaged Power Transformer and impose punishment as suggested therein.

It is the contention of the petitioner that he should not be made responsible for the missing Power Transformer, and more so when the respondents issued "No Dues Certificate" at the time of his retirement.

Though the petitioner produced certain handing over notes to contend that he is not responsible for the missing Power Transformer, I am not inclined to look into the same, for the said handing over notes merely relate to the charge handed over by the incumbent officers to the officers who were to succeed them and were obtained by the petitioner under the provisions of the Right to Information Act, 2005. At any rate, in the enquiry conducted by the respondents, and as is evident from the complaint lodged by the 1st respondent against the petitioner before the 3rd respondent, the petitioner who was entrusted with the custody of the Power Transformer, is alleged to have sold it away and misappropriated the amount for his personal advantage. When such is the allegation against the petitioner, it is not proper for this Court either to interfere with the impugned show cause notice or quash the complaint. If the petitioner is not responsible for the missing Power Transformer, he may take the said plea in his explanation to the impugned show cause notice, but certainly he cannot assail the show cause notice. As the petitioner is said to be responsible for the missing Power Transformer, the respondents before seeking to recover an amount of Rs. 1,82,500/- being the cost of the missing Power Transformer, issued the impugned notice calling upon the petitioner to show cause why the said amount should not be recovered and why the punishment of "cut of 25% in his pension for a period of five years" should not be imposed. In the issuance of the impugned notice, the petitioner cannot assume for himself that the respondents have pre-decided the issue and recover the amount and impose the punishment as indicated herein. The fact that the impugned order is a show cause notice, calling upon the petitioner to show cause, is itself an indication that the respondents intended to hear the petitioner, before effecting the recovery and impose punishment. If the

explanation, which the petitioner was called upon to submit to the show cause notice, is convincing, certainly the respondents would not effect the recovery and impose the punishment. But certainly on the grounds urged by the petitioner, it would not be proper for this Court to interfere with the impugned show cause notice as also the police complaint.

If the petitioner feels that the material which he obtained under the Right to Information Act, 2005 and produced before this Court, would make him not responsible for the missing Power Transformer, he is at liberty to place the same before the respondents along with the explanation, which he is asked to submit to the show cause notice.

With the observations as above, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 30th November, 2006.
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